

Rule 8, Ariz. R. Crim. P.

SPEEDY TRIAL — Rule 8 time limits, overview — Revised 11/2009

Rule 8, Arizona Rules of Criminal Procedure, generally governs the time limits during which cases must proceed to trial in Arizona. As the Arizona Supreme Court stated in *State v. Ferguson*, 120 Ariz. 345, 347, 586 P.2d 190, 192 (1978): "The purpose of Rule 8 is to insure that a criminal defendant is not forgotten while the orderly administration of justice swirls around him on all sides but leaving him untouched." Rule 8.2(a)(1) generally requires defendants in custody to be tried within 150 days from arraignment. In addition, Rule 8.2(a)(2) generally requires defendants who are released to be tried within 180 days from arraignment. Under Rule 8.2(a)(3), a defendant may be tried within 270 days from arraignment in certain complex cases. A capital case may be tried within 18 months under Rule 8.2(a)(4). These time limits exclude certain time periods set forth in Rule 8.4 (generally delays "occasioned by or on or behalf of the defendant").

Note, however, that Rule 8.1(e)¹ provides a procedure under which any party

¹Rule 8.1(e) provides:

Within twenty-five days after the arraignment in Superior Court either party may apply in writing to the court for a hearing to establish extraordinary circumstances requiring the suspension of Rule 8 in a particular case. Within five days of the receipt of the application the court shall hold the hearing and make findings of fact. The findings shall be immediately transmitted to the Chief Justice who may approve or decline to approve them. Upon approval of the findings by the Chief Justice, they shall be returned to the trial court where upon motion of either party the trial court may suspend the provisions of Rule 8 and reset the trial date for a time certain.

may ask the court to designate a case as an “extraordinary case,” allowing for suspension of the strict time limits of Rule 8. See *generally State v. Dickens*, 187 Ariz. 1, 10, 926 P.2d 468, 477 (1996); *State v. Farmer*, 126 Ariz. 569, 617 P.2d 521(1980). The Comment to Rule 8.1(e) explains that this rule is intended to “provide for unusually complicated cases or those cases in which there are an unusually large number of witnesses and/or exhibits making trial preparation cumbersome and lengthy for both parties.”

If the trial court orders a new trial after a mistrial or grants a motion for a new trial, that new trial “shall commence within 60 days of the entry of the order of the court.” If an appellate court reverses the defendant’s conviction, Rule 8.2(c) requires that the retrial “commence within 90 days of the service of the mandate of the Appellate Court.”

Rule 8.5, Arizona Rules of Criminal Procedure, provides for limited extensions of the time limits within which a trial must begin. Under Rule 8.5(a), all motions to continue “must be in writing and state with specificity the reason(s) justifying the continuance.” A trial date will be continued “only upon a showing that extraordinary circumstances exist and that delay is indispensable to the interests of justice,” and any continuance “may be granted only for so long as is necessary to serve the interests of justice.” Rule 8.5(b), Arizona Rules of Criminal Procedure.

A.R.S. § 13-107(G)² provides that if the action is commenced within the statute

²That subsection provides:

If a complaint, indictment or information filed before the period of limitation has expired is dismissed for any reason, a new prosecution may be commenced within six months after the dismissal becomes final even if

of limitations and is later dismissed “for any reason,” the State may refile the action within six months after the dismissal even if the statute of limitations has expired. If charges against a criminal defendant are initially dismissed without prejudice, and later refiled by the State, the limits of Rule 8.2(a) begin anew. *State v. Mendoza*, 170 Ariz. 184, 187, 823 P.2d 51, 54 (1992); accord, *Johnson v. Tucson City Court*, 156 Ariz. 284, 287, 751 P.2d 600, 603 (App. 1988). However, Rule 16.6³ provides that the State may not dismiss a case simply for the purpose of avoiding the Rule 8 time limits.

Rule 8.6 requires the trial court to dismiss a case if the time limits imposed by Rule 8 have been violated; the dismissal may be with or without prejudice depending on the circumstances. The Rule 8 speedy trial time limit is much stricter than the constitutional right to a speedy trial under the Sixth Amendment to the United States Constitution⁴ or under Article II, § 24 of the Arizona Constitution.⁵ *State v. Spreitz*, 190 Ariz. 129, 136, 945 P.2d 1260, 1267 (1997). “By imposing explicit time standards, the

the period of limitation has expired at the time of the dismissal or will expire within six months of the dismissal.

³Rule 16.6(a) states:

Dismissal of prosecution

a. On Prosecutor's Motion. The court, on motion of the prosecutor showing good cause therefor, may order that a prosecution be dismissed at any time upon finding that the purpose of the dismissal is not to avoid the provisions of Rule 8.

⁴The Sixth Amendment provides: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial”

⁵Article II, § 24 provides: “In criminal prosecutions, the accused shall have the right . . . to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed”

rule 8 requirements restrict the state more than either the state or federal constitutions.” *State v. Schaaf*, 169 Ariz. 323, 327, 819 P.2d 909, 913 (1991). The specific time limits imposed by Rule 8 are not required by either the United States Constitution or the Arizona Constitution. *State v. Smith*, 146 Ariz. 325, 326, 705 P.2d 1376, 1377 (App. 1985). Rather, they are arbitrary time limits imposed by the Arizona Supreme Court to insure that trials begin expeditiously.

The purpose of Rule 8.6 is to afford a defendant relief from a Rule 8 speedy trial violation before any untimely trial takes place. Accordingly, Rule 8.1(c)⁶ requires the prosecutor to inform the trial court of facts relevant to determining the order of cases on the court’s calendar, such as the last day for each case, so that the trial court can determine which cases need to proceed first. Similarly, Rule 8.1(d)⁷ requires the defense to keep track of the time limits and advise the court if the time limits are approaching. The defense cannot simply wait for the time limits to expire and then seek relief.

Generally, the right to a speedy trial is waived unless the defendant promptly asserts the right in the trial court. *State v. Schaaf*, 169 Ariz. 323, 327, 819 P.2d 909, 913

⁶ Rule 8.1(c) provides:

Duty of Prosecutor. The prosecutor shall advise the court of facts relevant to determining the order of cases on the calendar.

⁷Rule 8.1(d) provides:

Duty of Defense Counsel. The defendant's counsel shall advise the court of the impending expiration of time limits in the defendant's case. Failure to do so may result in sanctions and should be considered by the court in determining whether to dismiss an action with prejudice pursuant to Rule 8.6.

(1991). To preserve a technical, non-prejudicial Rule 8 violation claim, the defendant must bring a pretrial special action. *State v. Vasko*, 193 Ariz. 142, 148, 971 P.2d 189, 195 (App. 1998).